

DOCKET NO. 559540

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

VS.

SAZE INC.
D/B/A NEW WAY FOOD STORE
PERMIT/LICENSE NO(s).
Q624105, BF624106

GREGG COUNTY, TEXAS
(SOAH DOCKET NO. 458-08-2521)

§ BEFORE THE TEXAS
§
§
§
§
§ ALCOHOLIC
§
§
§
§
§ BEVERAGE COMMISSION

ORDER ADOPTING PROPOSAL FOR DECISION

CAME ON FOR CONSIDERATION this 4th day of November 2008, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Kyle J. Groves. The hearing convened on June 6, 2008 and the record remained open until July 7, 2008 so the parties could file written closing arguments. Both parties filed closing arguments. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on September 8, 2008. This Proposal For Decision was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. As of this date no exceptions have been filed.


The Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge contained in the Proposal For Decision and incorporates those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

IT IS THEREFORE ORDERED, by the Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Respondent's renewal application for the issuance of a Wine Only Package Store Permit and a Food and a Beer Retailer's Off Premise License be **GRANTED**.

This Order will become final and enforceable on November 25, 2008, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties in the manner indicated below.

SIGNED this the 4th day of January, 2008, at
Austin, Texas.



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
6333 Forest Park Road, Suite 150-A
Dallas, Texas 75235
VIA FACSIMILE TO (214) 956-8611

Timothy E. Griffith
ATTORNEY FOR RESPONDENT
101 East Park Blvd., Suite 600
Plano, TX 75074
VIA FACSIMILE TO 469-742-9521

Saze Inc.
d/b/a New Way Food Store
RESPONDENT
1306 S Green Street
Longview, TX 75602
VIA FIRST CLASS MAIL

Tonya Frazier
PROTESTANT
3505 Bill Owens Pkwy.
Longview, Texas 75605
VIA FIRST CLASS MAIL

Ramona M. Perry
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Dallas Enforcement District Office

RMP/aa

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REGARDING:

PROPOSAL FOR DECISION

DOCKET NUMBER:

458-08-2521

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TIMOTHY GRIFFITH

(469) 742-9521

RAMONA PERRY (TEXAS ALCOHOLIC BEVERAGE
COMMISSION)

TONYA FRAZIER

VIA REGULAR MAIL

LOU BRIGHT (TEXAS ALCOHOLIC BEVERAGE
COMMISSION)ALAN STEEN (TEXAS ALCOHOLIC BEVERAGE
COMMISSION)

(512) 206-3350

NOTE: IF ALL PAGES ARE NOT RECEIVED, PLEASE CONTACT LEIGH NOLAN(la) (214) 956-8616

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State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

September 8, 2008

Alan Steen
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

VIA FACSIMILE 512/206-3203

**RE: Docket No. 458-08-2521 Texas Alcoholic Beverage Commission, Tonya Frazier
V. Saze Inc. D/B/A New Way Food Store**

Dear Mr. Steen:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Kyle J. Groves".

Kyle J. Groves
Administrative Law Judge

KG/lan
Enclosure

xc Ramona Perry, Staff Attorney, Texas Alcoholic Beverage Commission, **VIA FACSIMILE 713/426/7965**
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, **VIA FACSIMILE 512/206-3498**
Timothy Griffith, Attorney for Respondent, **VIA FACSIMILE 469/742-9521**
Tonya Frazier, Protestant, **VIA REGULAR MAIL**

DOCKET NO. 458-08-2521

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
Petitioner/Protestant	§	
	§	
TONYA FRAZIER,	§	
Protestant	§	
	§	
V.	§	OF
	§	
SAZE INC. D/B/A	§	
NEW WAY FOOD STORE	§	
Respondent	§	
	§	
(TABC CASE NO. 559540)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Saze, Inc., d/b/a New Way Food Store (Applicant), filed a renewal application and change of officer/director with the Texas Alcoholic Beverage Commission (Commission) for a wine only package store permit, Q-624105, and beer retailer's off-premises license, BF-624106, for a premise known as New Way Food Store located at 1306 S. Green Street, Longview, Texas. The Protestants contest the issuance of the permits based on general welfare, health, peace, moral, and safety concerns of the neighborhood.

After considering the arguments and evidence presented by the parties, the Administrative Law Judge (ALJ) finds that there is an insufficient basis for denying the application and change of officer/director and recommends that the permits be issued.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There were no contested issues of jurisdiction, notice, or venue in this proceeding. Therefore, those matters are set out in the proposed findings of fact and conclusions of law without further discussion here.

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On June 6, 2008, a hearing convened at the State Office of Administrative Hearings (SOAH) in Dallas, Texas, before ALJ Kyle J. Groves. The applicant was represented by attorney Timothy Griffith. Staff was represented by attorney Ramona Perry, and Tonya Frazier appeared *pro se*. The record remained open until July 7, 2008.

II. LEGAL STANDARDS AND APPLICABLE LAW

Protestants challenge the application on the basis of § 11.46(a)(8) of the Texas Alcoholic Beverage Code (Code). Section 11.46(a)(8) provides that a permit may be denied if the Commission has reasonable grounds to believe and finds that "the place or manner in which the applicant may conduct his business warrants the refusal of a permit based on the general welfare, peace, morals, and safety of the people and on the public sense of decency."

III. EVIDENCE

TABC presented the testimony of Agent Tommy Rodgers. Mr. Rodgers testified that the applicant for the renewal of the permit and license is Mohammad Arshad. Mr. Arshad is also seeking to become the sole stockholder of the business.

Mr. Rodgers said that upon receipt of the renewal application, TABC ran the permit history of Mr. Arshad. The history showed that Mr. Arshad previously held wine and beer retailer's off-premise permit, BQ-551797. There were three written warnings given to Mr. Arshad and two violations that led to penalties. On August 28, 2004, Mr. Arshad paid a fine stemming from an alleged sale to a minor. On September 29, 2006, Mr. Arshad waived his opportunity to have a hearing, and the permit was cancelled for another alleged sale to a minor.

TABC also presented the testimony of former TABC officer Jeff Pearson. Mr. Pearson said he did the investigation pertaining to the August 2004 sale to minor violation. He said the minor was 20 years old, and he was not asked for identification. The clerk who sold the beer to the minor was

Mr. Pearson also investigated the September 2006 sale of the 20 years old, and he likewise searched for identification

testament Tonya testified that her family was involved in the accident. She stated that the vehicle that was involved was a truck that was driven by Mr. Arshad who consumed alcohol before it was purchased by another person at Mr. Arshad's residence. Mr. Arshad's 8-year-old daughter Lauren killed her father in the accident. Ms. Arshad admitted there were other factors contributing to the death of her daughter such as vehicle speed and seat belt failure. However, she testified that the factors were not for the sale of the alcohol because the accident could have happened.

Muhammad Arshad fired. He said that his policy was to fire employees that sell
 to him. He said that he was present at his store when the August 2004 sale took place.
 He said that the clerk that sold the alcohol was fired. He also was present at the store when the
 September 2006 sale took place. He said that the clerk that sold the alcohol was also fired.

Mr. Arshad said that he did not request a hearing for the August 2004 sale because he did not have the time to pay the attorney. He also said that he agreed to the cancellation of the permit stemming from the September 2006 sale to the extent that he had another application pending. Mr. Arshad said that all of his current employees who sell alcohol are trained in his policy to deter the identification of people who seek to purchase alcohol. In addition, the permit and procedure relating to the sale of alcohol leave no

IV. DISCUSSION

The 'Protestant' party concerned that the issuance of the permit would be a blow to the general welfare, peace and safety of the people. Mr. Arshad has suffered terrible loss. However, Mr. Arshad says that he has taken the necessary steps to

that his establishment does not sell alcohol to minors. His employees have seller/servant certification, his policy is to always obtain identification, and his policies and procedures are clearly posted. In addition, he testified that any employee who sells alcohol to a minor is fired. With these policies and safeguards in place, the change of officer/director and issuance of the permit and license is warranted.

V. PROPOSED FINDINGS OF FACT

On February 5, 2007, Saze, Inc., d/b/a New Way Food Store filed a renewal application and change of owner/stockholder with the Texas Alcoholic Beverage Commission for a wine only package store permit, Q-624105, and beer retailer's off-premises license, BF-624106, for premises located at 1306 S. Green Street, Longview, Texas.

2. Protestants contested the issuance of the permits on the basis that the manner in which Respondent may conduct his business warrants the refusal of the permits based upon the general welfare, health, peace, morals, and safety of the people and the public sense of decency.
3. On April 15, 2008, Commission Staff issued a notice of hearing notifying all parties that a hearing would be held on the permit and license requests.
4. The notice of hearing included a statement regarding the time, place, and nature of the hearing; referenced the legal authority upon which the hearing would be held; cited the particular sections of the statutes and rules involved; and included a short, plain statement of the matters asserted.
5. The hearing was held June 6, 2008, in Dallas, Dallas County, Texas, before ALJ Kyle Groves, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings. The record remained open until July 7, 2008 so the parties could file written closing arguments.
6. Applicant is seeking a renewal application for a wine only package store permit, Q-624105, and beer retailer's off-premises license, BF-624106, and change of owner/stockholder for premises located at 1306 S. Green Street, Longview, Texas.
7. Applicant was the holder of wine and beer retailer's off-premise permit, BQ-551797.
8. BQ-551797 was cancelled because of a sale of an alcoholic beverage to a minor.
9. Applicant has taken appropriate safeguards in an effort to ensure that his employees will not

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sell alcohol to minors

VI. PROPOSED CONCLUSIONS OF LAW

The Texas Alcoholic Beverage Commission has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. Chapters 1 and 5 and §§ 6.01 and 11.46 (the Code).

2. The State Office of Administrative Hearings has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. Chapter 2003.
3. The parties received proper and timely notice of the proceedings and hearing, pursuant to TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Based on the foregoing findings, the evidence shows this application meets all requirements for issuance by the Commission. TEX. ALCO. BEV. CODE Chapters 11, 28, 32 and 44.
5. Since Applicant met all the standards set forth by the Commission, the burden of proof is upon the Protestants to show the permits should not be issued. The Protestants failed to meet this standard of proof.
6. Based on the foregoing findings, a preponderance of the evidence does not show that issuance of the requested permits will adversely affect the safety of the public, the general welfare, peace, or morals of the people, nor violate the public sense of decency, as prohibited by TEX. ALCO. BEV. CODE ANN. § 11.46(a)(8).
7. The application of Saze, Inc., d/b/a New Way Food Store for a change of officer/director and for a wine only package store permit, Q-624105, and beer retailer's off-premises license, BF-624106, for a premise known as New Way Food Store located at 1306 S. Green Street, Longview, Texas should be granted.

ISSUED September 8, 2008


KYLE J. GROVES
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS